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10 ARTHUR RENOWITZKY

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

13 ARTHUR RENOWITZKY,

14 Plaintiff,

15 v.

16 THE SPEARMINT RHINO  
17 COMPANIES WORLDWIDE,  
18 INC.; SANTA MARIA  
19 RESTAURANT ENTERPRISES,  
20 INC.

21 Defendants.

CASE NO. 2:22-cv-8815

Civil Rights

**COMPLAINT FOR PRELIMINARY  
AND PERMANENT INJUNCTIVE  
RELIEF AND DAMAGES:**

1. **Violations of Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*)**
2. **Violation of the California Unruh Act (Cal. Civil Code §§ 51 and 52)**
3. **Violation of the California Disabled Persons Act (Cal. Civil Code § 54 *et seq.*)**

DEMAND FOR JURY TRIAL

22 Plaintiff ARTHUR RENOWITZKY complains of Defendants THE  
23 SPEARMINT RHINO COMPANIES WORLDWIDE, INC.; SANTA MARIA  
24 RESTAURANT ENTERPRISES, INC. and each of them, and alleges as follows:

25 1. **INTRODUCTION:** Defendants denied Plaintiff ARTHUR  
26 RENOWITZKY an accessible restroom, service counter and path of travel at the  
27 Spearmint Rhino Club located at 505 S. Broadway, Santa Maria, California. On  
28 July 8<sup>th</sup> and 9<sup>th</sup> Plaintiff traveled to Santa Maria, California, to celebrate a friends

1 upcoming wedding with a bachelor party. On July 8, 2022, Plaintiff and his group  
2 of friends went to the Spearmint Rhino Club after dinner for some entertainment  
3 and beverages. After ordering a drink and finding a place to sit, Plaintiff needed to  
4 use the restroom. He asked an employee where the restrooms were located, and she  
5 directed him towards the back corner of the club. When entered the restroom,  
6 however, he discovered that he was unable to get his wheelchair into the restroom  
7 stall. Plaintiff was forced to expose himself and change his catheter in the middle of  
8 the restroom without the privacy that a stall or private restroom affords. Other  
9 customers of the club were coming in and out of the restroom as he was carrying  
10 out this private task. Plaintiff felt humiliated.

11 2. Defendants denied disabled Plaintiff ARTHUR RENOWITZKY  
12 accessible public facilities at Spearmint Rhino Club in Santa Maria, California.  
13 Plaintiff ARTHUR RENOWITZKY is a “person with a disability” or “physically  
14 handicapped person” who requires the use of a wheelchair for mobility. He is  
15 unable to use portions of public facilities which are not accessible to mobility  
16 disabled persons. On or about July 8, 2022, Plaintiff was denied his rights to full  
17 and equal access at the Spearmint Rhino Club. He was denied his civil rights under  
18 both California law and federal law, and continues to have his rights denied,  
19 because these facilities were not, and are not now, properly accessible to physically  
20 disabled persons, including those who use a wheelchair or other assistive devices  
21 for mobility.

22 3. Plaintiff seeks injunctive relief to require Defendants to make these  
23 facilities accessible to disabled persons and to ensure that any disabled person who  
24 attempts to patronize the subject premises will be provided accessible facilities.  
25 Plaintiff also seeks recovery of damages for his discriminatory experiences and  
26 denial of access and of civil rights, which denial is continuing as a result of  
27 Defendants’ failure to provide disabled accessible facilities. Plaintiff also seeks  
28 recovery of reasonable statutory attorney fees, litigation expenses and costs, under

1 federal and state law.

2 4. **JURISDICTION:** This Court has jurisdiction of this action pursuant  
3 to 28 USC section 1331 for violations of the Americans with Disabilities Act of  
4 1990, 42 USC sections 12101 *et seq.* Pursuant to pendant jurisdiction, attendant  
5 and related causes of action arising from the same facts are also brought under  
6 California law, including but not limited to violations of Health & Safety Code  
7 sections 19953-19959; California Civil Code sections 51, 52, 54, 54.1, 54.3 and 55;  
8 and Title 24 California Code of Regulations, the California State Building Code.

9 5. **VENUE:** Venue is proper in this court pursuant to 28 USC  
10 section 1391(b) and is founded on the fact that the real property which is the subject  
11 of this action is located in this district and that Plaintiff's causes of action arose in  
12 this district.

13 6. **INTRADISTRICT:** This case should be assigned to the Western  
14 Division as the real property which is the subject of this action is located in this  
15 intradistrict and Plaintiff's causes of action arose in this intradistrict.

16 7. **PARTIES:** Plaintiff is a qualified physically disabled person who  
17 cannot walk due to paraplegia and who requires use of a wheelchair for locomotion.  
18 He also owns a disabled licensed vehicle which entitles him to park in a properly  
19 configured disabled accessible parking space. He has been issued a California state  
20 placard for disabled parking.

21 8. Defendants THE SPEARMINT RHINO COMPANIES  
22 WORLDWIDE; SANTA MARIA RESTAURANT ENTERPRISES, INC. are and  
23 were the owners, operators, lessors and/or lessees of the subject business, property  
24 and buildings at all times relevant to this Complaint. Plaintiff is informed and  
25 believes that each of the Defendants herein is the agent, employee or representative  
26 of each of the other Defendants, and performed all acts and omissions stated herein  
27 within the scope of such agency or employment or representative capacity and is  
28 responsible in some manner for the acts and omissions of the other Defendants in

1 proximately causing the damages complained of herein.

2 9. The Spearmint Rhino Club is a place of “public accommodation” and  
3 “business establishment” subject to the requirements of 42 USC  
4 section 12181(7)(B) and (C) of the Americans with Disabilities Act of 1990; of  
5 California Health & Safety Code sections 19953 *et seq.*; of California Civil Code  
6 sections 51 *et seq.*; and of California Civil Code sections 54 *et seq.* On information  
7 and belief, the Spearmint Rhino Club and its facilities were built after July 1, 1970,  
8 and since then have undergone construction and/or “alterations, structural repairs,  
9 or additions,” subjecting each such facility to disabled access requirements per  
10 Health & Safety Code sections 19953-19959 *et seq.*, and, as to construction and/or  
11 alterations since January 26, 1993, to the disabled access requirements of  
12 section 12183 of the Americans with Disabilities Act of 1990. Such facilities  
13 constructed or altered since 1982 are also subject to “Title 24,” the California State  
14 Architect’s Regulations, also known as the California Building Code. Further,  
15 irrespective of the alteration history, such premises are subject to the “readily  
16 achievable” barrier removal requirements of Title III of the Americans with  
17 Disabilities Act of 1990, as defined by the ADA. 42 USC § 12181(9).

18 10. **FACTUAL STATEMENT:** Plaintiff Arthur Renowitzky founded the  
19 Life Goes on Foundation in 2008, “a non-political, non-profit organization,” created  
20 to “provide [spinal cord injury] survivors and their families with support to aid in  
21 the life-long process towards recovery.” See [https://www.lgof.org/about\\_us](https://www.lgof.org/about_us) . The  
22 Life Goes on Foundation works “nationally to advance the personal independence  
23 and wellness of individuals living with disabilities.” Plaintiff prides himself on not  
24 just his independence but on empowering other disabled persons, including  
25 coaching for the Junior Warriors children’s wheelchair basketball team. A news  
26 report video depicting the charity work that Plaintiff has done and his interactions  
27 with several NBA Warriors players can be seen here:

28 <https://abc7news.com/community-events/paralyzed-dubs-fan-inspires-community->

1 [and-the-warriors/5264759/](#).

2 11. Plaintiff is a disabled person resulting from a spinal cord injury that he  
3 suffered because of a random act of gun violence by a stranger in 2008. His spinal  
4 cord between the T2 and T3 vertebrae is severed. He has no feeling from his chest  
5 downward and is unable to walk or climb stairs. He uses a manual wheelchair and  
6 has good upper body strength from working out and playing wheelchair basketball.  
7 His body signals to him when he needs to relieve himself, including warmth in his  
8 stomach, twitching, and sweating. Plaintiff has learned to interpret these signals  
9 and must use the restroom within 5 to 10 minutes of noticing them to avoid  
10 experiencing a bodily functions accident. He relies on businesses and other public  
11 places providing accessible restroom facilities so that he can carry out these  
12 functions in a regular and timely manner.

13 12. On July 8, 2022, Plaintiff traveled to Santa Maria, California to attend  
14 a bachelor party for a close friend. The group had a nice dinner together, and then  
15 they decided to go to the Spearmint Rhino Club for some beverages and  
16 entertainment.

17 13. Plaintiff and his group of friends arrived at the Club around 9:00 pm.  
18 Plaintiff parked his car in a designated accessible parking space, exited his vehicle  
19 and pushed himself to the entrance of the Club.

20 14. Plaintiff showed his ID to the security personnel at the front entrance.  
21 Then he approached the service counter near the door to pay his entrance fee. The  
22 service counter was too high for Plaintiff to comfortably reach, and it was difficult  
23 to talk to the employee at the front entrance who was collecting the money.  
24 However, Plaintiff managed to complete his transaction with difficulty.

25 15. After entering the Spearmint Rhino Club, Plaintiff ordered a bottle of  
26 water and then his group looked for table to sit at. Plaintiff found it very difficult to  
27 find a path of travel through the club large enough to accommodate his wheelchair  
28 while his group was looking for a table. He had to ask several people to move, and

1 he had to ask his friends to move empty chairs so that he could get through the  
2 crowded club. The group found a table to sit at, and then most of the group went up  
3 to the stage to see the dancers up close. Plaintiff could tell that the path of travel  
4 from the table where they were sitting to the stage was too crowded for him to  
5 traverse, so he stayed at the table rather than going with the rest of his group.  
6 Plaintiff felt self-conscious about being segregated from the rest of his group due to  
7 the inaccessibility of the Club.

8 16. After the group had been at the Spearmint Rhino for about 30 minutes,  
9 Plaintiff needed to use the restroom. He asked one of the servers for directions to  
10 the restroom. The server pointed Plaintiff towards the back corner of the Club.  
11 Plaintiff asked one of his friends to go with him because he needed assistance  
12 moving chairs out of the way so that he could roll himself to the restroom.

13 17. Plaintiff and his friend headed to the back of the Club where the server  
14 had directed. Again, the path of travel was blocked by the crowded tables and chairs  
15 in the Club. Plaintiff made it to the restroom with the assistance of his friend.

16 18. Plaintiff entered the restroom, and he saw that the restroom was not  
17 accessible. There was a toilet in a standard sized stall that his wheelchair clearly  
18 would not fit into. There were no grab bars, and many of the other accessories were  
19 difficult for him to reach, including the sink and soap dispenser.

20 19. Plaintiff knew that he needed to use the restroom soon or he would  
21 experience a bodily functions accident. Plaintiff made the difficult decision to  
22 change his catheter out in the open, in the middle of the restroom instead of having  
23 an accident. There was no way for him to change his catheter in private, so  
24 Plaintiff had to endure the embarrassment of having other club patrons enter and  
25 exit the restroom while he was carrying out this extremely private function.

26 20. Plaintiff changed his catheter as quickly as possible, and when he was  
27 disposing of his catheter supplies, he got some waste on the wheels of his  
28 wheelchair. Plaintiff wheeled himself up to the sink with difficulty due to the

1 configuration of the restroom and cleaned himself up. Despite washing his hands  
2 and wiping the wheels of his wheelchair off with wipes, Plaintiff did not feel clean,  
3 and he worried that he smelled of urine.

4 21. Plaintiff exited the restroom and headed back to the table with his  
5 friend. On his way back, Plaintiff asked a manager if there was another restroom in  
6 the Club that he could use that might be more accessible. The manager of the Club  
7 told Plaintiff that the restroom he had used was the only public restroom in the club.

8 22. Plaintiff and his friend returned to the table, but Plaintiff was  
9 uncomfortable staying at the Club longer due to the lack of available accessible  
10 restroom. After about 30 minutes, he and his friend left and went back to the hotel.  
11 Plaintiff's night was ruined, and worse, he felt like he had contributed to ending his  
12 friend's bachelor party early. The inaccessible conditions of the Spearmint Rhino  
13 caused Plaintiff significant difficulty, discomfort, and embarrassment.

14 23. Defendants have failed to provide an accessible restroom. To the  
15 extent that they could not make their restroom fully accessible because to do so was  
16 not readily achievable, they failed to make the restroom as accessible as possible or  
17 to provide any accessible features so that disabled persons could access the  
18 restroom. Plaintiff estimates the costs of improving access in the restroom can  
19 range between \$300 - \$600 for remediating each individual element to make the  
20 premises and restroom more accessible to the maximum extend feasible. For  
21 example, installing grab bars might cost \$300. Removing the partitions to create a  
22 unisex restroom could cost \$500. Other items cost almost nothing to change, such  
23 as relocating paper towel, toilet paper, and soap dispensers. Each of these are easy  
24 to do and do not cost very much to accomplish, and the benefit to disabled persons  
25 and Plaintiff is the ability to use the restroom which allows them to use the  
26 premises at all. Similarly, relocating or even replacing chairs and tables to allow an  
27 accessible path of travel or lowering the height of fixtures costs less than \$500 each  
28 and would allow fuller enjoyment of the facility for disabled persons and Plaintiff.



24. Notably, based on publicly available building records and City Attorney correspondence, Defendants appear to have engaged in illegal and unpermitted construction and alteration projects in 1997, shortly after they occupied the space. These projects did not include upgrading the accessibility of the restrooms as required by law. To the extent these illegal alterations were performed, Defendants should be required to provide fully accessible restrooms regardless of cost or feasibility as those defenses should not protect illegal conduct.

25. The above referenced barriers to access are listed without prejudice to Plaintiff citing additional barriers to access by an amended complaint after inspection by Plaintiff's access consultant. *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903 (9th Cir. 2011); *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008); *Chapman v. Pier One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir. 2011). All of these barriers to access render the premises inaccessible to physically disabled persons who are mobility impaired, such as Plaintiff, and are barriers Plaintiff may encounter when he returns to the premises. All facilities must be brought into compliance with all applicable federal and state code requirements, according to proof.

26. Further, each and every violation of the Americans with Disabilities Act of 1990 also constitutes a separate and distinct violation of California Civil Code section 54(c) and 54.1(d), thus independently justifying an award of damages and injunctive relief pursuant to California law, including but not limited to Civil Code sections 54.3 and 55.

**FIRST CAUSE OF ACTION:  
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990  
42 USC §§ 12101 *et seq***

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in Paragraphs 1 through 26 of this Complaint and incorporates them herein as if separately re-pleaded.

28. In 1990 the United States Congress made findings that laws were



1 needed to more fully protect “some 43,000,000 Americans [with] one or more  
 2 physical or mental disabilities;” that “historically, society has tended to isolate and  
 3 segregate individuals with disabilities;” that “such forms of discrimination against  
 4 individuals with disabilities continue to be a serious and pervasive social problem;”  
 5 that “the Nation’s proper goals regarding individuals with disabilities are to assure  
 6 equality of opportunity, full participation, independent living, and economic self-  
 7 sufficiency for such individuals;” and that “the continuing existence of unfair and  
 8 unnecessary discrimination and prejudice denies people with disabilities the  
 9 opportunity to compete on an equal basis and to pursue those opportunities for  
 10 which our free society is justifiably famous...” 42 U.S.C. §12101.

11 29. Plaintiff is a qualified individual with a disability as defined in the  
 12 Rehabilitation Act and in the Americans with Disabilities Act of 1990.

13 30. In passing the Americans with Disabilities Act of 1990 (hereinafter  
 14 “ADA”), Congress stated as its purpose:

15 It is the purpose of this Act

16 (1) to provide a clear and comprehensive national mandate for the  
 17 elimination of discrimination against individuals with disabilities;

18 (2) to provide clear, strong, consistent, enforceable standards addressing  
 discrimination against individuals with disabilities;

19 (3) to ensure that the Federal Government plays a central role in enforcing  
 20 the standards established in this Act on behalf of individuals with disabilities;  
 and

21 (4) to invoke the sweep of congressional authority, including the power to  
 22 enforce the fourteenth amendment and to regulate commerce, in order to  
 23 address the major areas of discrimination faced day-to-day by people with  
 disabilities.

24 42 USC § 12101(b).

25 31. As part of the ADA, Congress passed “Title III - Public  
 26 Accommodations and Services Operated by Private Entities” (42 USC § 12181 *et*  
 27 *seq.*). The subject property and facility is one of the “private entities” which are  
 28 considered “public accommodations” for purposes of this title, which include but

1 are not limited to any “restaurant, bar or other establishment serving food or drink”  
2 and any “place of exhibition or entertainment.” 42 USC § 12181(7)(B) and (C).

3 32. The ADA states that “No individual shall be discriminated against on  
4 the basis of disability in the full and equal enjoyment of the goods, services,  
5 facilities, privileges, advantages, or accommodations of any place of public  
6 accommodation by any person who owns, leases, or leases to, or operates a place of  
7 public accommodation.” 42 U.S.C. § 12182. The specific prohibitions against  
8 discrimination include, but are not limited to the following:

9 § 12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory  
10 to afford an individual or class of individuals, on the basis of a disability or  
11 disabilities of such individual or class, directly, or through contractual, licensing, or  
12 other arrangements, with the opportunity to participate in or benefit from a good,  
13 service, facility, privilege, advantage, or accommodation that is not equal to that  
14 afforded to other individuals.”

15 § 12182(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,  
16 practices, or procedures when such modifications are necessary to afford such  
17 goods, services, facilities, privileges, advantages, or accommodations to individuals  
18 with disabilities...;”

19 § 12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure  
20 that no individual with a disability is excluded, denied service, segregated, or  
21 otherwise treated differently than other individuals because of the absence of  
22 auxiliary aids and services...;”

23 § 12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and  
24 communication barriers that are structural in nature, in existing facilities... where  
25 such removal is readily achievable;”

26 § 12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier  
27 under clause (iv) is not readily achievable, a failure to make such goods, services,  
28 facilities, privileges, advantages, or accommodations available through alternative

1 methods if such methods are readily achievable.”

2 The acts and omissions of Defendants set forth herein were in violation of  
3 Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28  
4 C.F.R. Part 36 *et seq.*

5 33. The removal of each of the physical barriers complained of by Plaintiff  
6 as hereinabove alleged, were at all times herein mentioned “readily achievable”  
7 under the standards of sections 12181 and 12182 of the ADA. As noted  
8 hereinabove, removal of each and every one of the architectural and/or policy  
9 barriers complained of herein were already required under California law. Further,  
10 on information and belief, alterations, structural repairs or additions since January  
11 26, 1993, have also independently triggered requirements for removal of barriers to  
12 access for disabled persons per section 12183 of the ADA. In the event that  
13 removal of any barrier is found to be “not readily achievable,” Defendants still  
14 violated the ADA, per section 12182(b)(2)(A)(v) by failing to provide all goods,  
15 services, privileges, advantages and accommodations through alternative methods  
16 that were “readily achievable.” In this case, for example, Defendants could remove  
17 the stall partitions in the men’s restroom to create a single accommodation restroom  
18 rather than maintaining an inaccessible restroom.

19 34. The ability to use a restroom is a fundamental necessity of accessing  
20 and using a club. So too is the ability to enter and exit the facility, and move around  
21 the premises unimpeded by barriers to access. Therefore, the benefits of creating a  
22 restroom with accessible does not exceed the costs of readily achievable barrier  
23 removal. These costs are fundamental to doing business, like any other essential  
24 function of operating a store, such as the costs of as ensuring fire safety. It is thus  
25 readily achievable to remove these barriers.

26 35. On information and belief, as of the dates of Plaintiff’s encounters at  
27 the premises and as of the filing of this Complaint, Defendants’ actions, policies,  
28 and physical premises have denied and continue to deny full and equal access to

1 Plaintiff and to other mobility disabled persons in other respects, which violate  
 2 Plaintiff's right to full and equal access and which discriminate against Plaintiff on  
 3 the basis of his disabilities, thus wrongfully denying to Plaintiff the full and equal  
 4 enjoyment of the goods, services, facilities, privileges, advantages and  
 5 accommodations, in violation of 42 U.S.C. sections 12182 and 12183 of the ADA.

6 36. Defendants' actions continue to deny Plaintiff's rights to full and equal  
 7 access by deterring Plaintiff from patronizing the Spearmint Rhino Club and  
 8 discriminated and continue to discriminate against him on the basis of his  
 9 disabilities, thus wrongfully denying to Plaintiff the full and equal enjoyment of  
 10 Defendants' goods, services, facilities, privileges, advantages and accommodations,  
 11 in violation of section 12182 of the ADA. 42 U.S.C. § 12182. Plaintiff intends to  
 12 return to patronize the Spearmint Rhino Club once barriers to access have been  
 13 removed.

14 37. Pursuant to the Americans with Disabilities Act, 42 U.S.C. sections  
 15 12188 *et seq.*, Plaintiff ARTHUR RENOWTIZKY entitled to the remedies and  
 16 procedures set forth in section 204(a) of the Civil Rights Act of 1964, 42 USC  
 17 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of his  
 18 disabilities in violation of sections 12182 and 12183 of this title. On information  
 19 and belief, Defendants have continued to violate the law and deny the rights of  
 20 Plaintiff and other disabled persons to "full and equal" access to this public  
 21 accommodation since on or before Plaintiff's encounters. Pursuant to  
 22 section 12188(a)(2)

23 [i]n cases of violations of § 12182(b)(2)(A)(iv) and § 12183(a)...  
 24 injunctive relief shall include an order to alter facilities to make such  
 25 facilities readily accessible to and usable by individuals with disabilities  
 26 to the extent required by this title. Where appropriate, injunctive relief  
 shall also include requiring the provision of an auxiliary aid or service,  
 modification of a policy, or provision of alternative methods, to the  
 extent required by this title.

27 38. Plaintiff seeks relief pursuant to remedies set forth in section 204(a) of  
 28 the Civil Rights Act of 1964 (42 USC 2000(a)-3(a)), and pursuant to Federal

1 Regulations adopted to implement the Americans with Disabilities Act of 1990.  
 2 Plaintiff ARTHUR RENOWITZKY is a qualified disabled person for purposes of  
 3 section 12188(a) of the ADA who is being subjected to discrimination on the basis  
 4 of disability in violation of Title III and who has reasonable grounds for believing  
 5 he will be subjected to such discrimination each time that he may use the property  
 6 and premises, or attempt to patronize the Spearmint Rhino Club, in light of  
 7 Defendants' policies and physical premises barriers.

8 39. Plaintiff seeks an award of reasonable attorney fees, litigation  
 9 expenses and costs pursuant to 42 U.C.S section 12205.

10 WHEREFORE, Plaintiff requests relief as outlined below

11 **SECOND CAUSE OF ACTION:**  
 12 **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT,**  
 13 **CIVIL CODE SECTIONS 51 AND 52, AND THE AMERICANS WITH**  
**DISABILITIES ACT AS INCORPORATED**  
**BY CIVIL CODE SECTION 51(f)**

14 40. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 15 hereafter, the factual allegations contained in Paragraphs 1 through 39 of this  
 16 Complaint and incorporates them herein as if separately re-pleaded.

17 41. At all times relevant to this complaint, California Civil Code section  
 18 51 has provided that physically disabled persons are free and equal citizens of the  
 19 state, regardless of medical condition or disability:

20 All persons within the jurisdiction of this state are free and equal, and  
 21 no matter what their sex, race, color, religion, ancestry, national origin,  
 22 *disability, or medical condition* are entitled to the full and equal  
 accommodations, advantages, facilities, privileges, or services in all  
 business establishments of every kind whatsoever.

23 Civil Code § 51(b). [Emphasis added.]

24 42. California Civil Code section 52 provides that the discrimination by  
 25 Defendants against Plaintiff on the basis of his disability constitutes a violation of  
 26 the general anti-discrimination provisions of sections 51 and 52.

27 43. Each of Defendants' discriminatory acts or omissions constitutes a  
 28 separate and distinct violation of California Civil Code section 52, which provides

1 that:

2 Whoever denies, aids or incites a denial, or makes any discrimination  
3 or distinction contrary to section 51, 51.5, or 51.6 is liable for each and  
4 every offense for the actual damages, and any amount that may be  
5 determined by a jury, or a court sitting without a jury, up to a maximum  
6 of three times the amount of actual damage but in no case less than four  
thousand dollars (\$4,000), and any attorney's fees that may be  
determined by the court in addition thereto, suffered by any person  
denied the rights provided in Section 51, 51.5, or 51.6.

7 44. Any violation of the Americans with Disabilities Act of 1990 also  
8 constitutes a violation of California Civil Code section 51(f), thus independently  
9 justifying an award of damages and injunctive relief pursuant to California law,  
10 including Civil Code section 52. Per Civil Code section 51(f), "A violation of the  
11 right of any individual under the Americans with Disabilities Act of 1990 (Public  
12 Law 101-336) shall also constitute a violation of this section."

13 45. The actions and omissions of Defendants as herein alleged constitute a  
14 denial of access to and use of the described public facilities by physically disabled  
15 persons within the meaning of California Civil Code sections 51 and 52. As a  
16 proximate result of Defendants' action and omissions, Defendants have  
17 discriminated against Plaintiff in violation of Civil Code sections 51 and 52, and are  
18 responsible for statutory, and compensatory damages to Plaintiff, according to  
19 proof.

20 46. **FEES AND COSTS:** As a result of Defendants' acts, omissions and  
21 conduct, Plaintiff has been required to incur attorney fees, litigation expenses and  
22 costs as provided by statute in order to enforce Plaintiff's rights and to enforce  
23 provisions of law protecting access for disabled persons and prohibiting  
24 discrimination against disabled persons. Plaintiff therefore seeks recovery of all  
25 reasonable attorney fees, litigation expenses and costs pursuant to the provisions of  
26 California Civil Code sections 51 and 52. Additionally, Plaintiff's lawsuit is  
27 intended to require that Defendants make their facilities and policies accessible to  
28 all disabled members of the public, justifying "public interest" attorney fees,



litigation expenses and costs pursuant to the provisions of California Code of Civil Procedure section 1021.5 and other applicable law.

WHEREFORE, Plaintiff prays for damages and injunctive relief as hereinafter stated.

**THIRD CAUSE OF ACTION:  
DAMAGES AND INJUNCTIVE RELIEF  
FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC  
FACILITIES IN A PUBLIC ACCOMMODATION  
(California Health & Safety Code §§ 19955 *et seq*; Civil Code §§ 54 *et seq*.)**

47. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in Paragraphs 1 through 46, above, and incorporates them herein by reference as if separately repled hereafter.

48. Plaintiff ARTHUR RENOWITZKY and other similarly situated physically disabled persons, including those who require the use of an assistive device for mobility, are unable to use public facilities on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code sections 19953 -19959. Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code sections 19953 *et seq*. Further, Plaintiff is also protected against policy and architectural barrier discrimination by California Civil Code sections 54 and 54.1, the “Disabled Persons Act.” “Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians’ offices, public facilities, and other public places.” Civil Code § 54(a). Furthermore, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, . . . places of public accommodation, amusement, or resort, and other places to which the general public is invited.” Civil Code § 54.1(a). Additionally, any violation of the ADA, including but not limited to any violation of 42 USC sections 12182 and 12183, is also incorporated as a violation of the



1 Disabled Persons Act. Civil Code §§ 54(c), and 54.1(d).

2 49. Title 24, California Code of Regulations, formerly known as the  
3 California Administrative Code and now also known as the California Building  
4 Code, was in effect at the time of each alteration which, on information and belief,  
5 occurred at such public facility since January 1, 1982, thus requiring access  
6 complying with the specifications of Title 24 whenever each such “alteration,  
7 structural repair or addition” was carried out. On information and belief,  
8 Defendants and/or their predecessors in interest carried out new construction and/or  
9 alterations, structural repairs, and/or additions to such buildings and facilities  
10 during the period Title 24 has been in effect. Further, Plaintiff alleges, on  
11 information and belief, that construction, alterations, structural repairs, and/or  
12 additions which triggered access requirements at all relevant portions the Spearmint  
13 Rhino Club, also occurred between July 1, 1970, and December 31, 1981, and  
14 required access pursuant to the A.S.A. (American Standards Association)  
15 Regulations then in effect, pursuant to the incorporated provisions of California  
16 Government Code sections 4450 *et seq.* Further, on information and belief,  
17 additions to the building after the initial construction also occurred after January 1,  
18 1972, triggering access requirements per Health and Safety Code section 19959.  
19 Alterations or additions after January 26, 1993 trigger ADA liability and  
20 requirements per 42 USC sections 12182 and 12183 of the ADA.

21 50. **INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit  
22 the acts and omissions of Defendants as complained of herein which are continuing  
23 on a day-to-day basis and which have the effect of wrongfully excluding Plaintiff  
24 and other members of the public who are physically disabled from full and equal  
25 access to these public facilities. Such acts and omissions are the cause of  
26 humiliation and mental and emotional suffering of Plaintiff in that these actions  
27 continue to treat Plaintiff as an inferior and second-class citizen and serve to  
28 discriminate against him on the sole basis that he is a person with disabilities who

1 requires the use of a wheelchair or other assistive device for movement in public  
2 places.

3 51. Plaintiff is deterred from returning to use these facilities, because the  
4 lack of access will foreseeably cause him further difficulty, discomfort and  
5 embarrassment, and Plaintiff is unable, so long as such acts and omissions of  
6 Defendants continue, to achieve equal access to and use of these public facilities.  
7 Therefore, Plaintiff cannot return to patronize the Spearmint Rhino Club and its  
8 facilities and is deterred from further patronage until these facilities are made  
9 properly accessible for disabled persons, including Plaintiff and other mobility  
10 disabled persons. Plaintiff specifically intends to return and patronize the  
11 Spearmint Rhino Club once it is made accessible, including its path of travel to the  
12 restroom.

13 52. The acts of Defendants have proximately caused and will continue to  
14 cause irreparable injury to Plaintiff if not enjoined by this Court. Plaintiff seeks  
15 injunctive relief as to all inaccessible areas of the premises that he has personally  
16 encountered, and, as to all areas identified during this litigation by Plaintiff's access  
17 consultant, that he or other physically disabled persons may encounter in the future.  
18 *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008); *Chapman v. Pier One*  
19 *Imports (USA), Inc.*, 631 F. 3d 939 (9<sup>th</sup> Cir. 2011); *Oliver v. Ralphs Grocery Co.*,  
20 654 F.3d 903 (9<sup>th</sup> Cir. 2011). As to those of the Defendants that currently own,  
21 operate, and/or lease (from or to) the subject premises, Plaintiff seeks preliminary  
22 and permanent injunctive relief to enjoin and eliminate the discriminatory practices  
23 and barriers that deny full and equal access for disabled persons, and for reasonable  
24 statutory attorney fees, litigation expenses and costs.

25 53. Wherefore Plaintiff asks this Court to preliminarily and permanently  
26 enjoin any continuing refusal by Defendants to grant full and equal access to  
27 Plaintiff in the ways complained of and to require Defendants to comply forthwith  
28 with the applicable statutory requirements relating to access for disabled persons.

1 Such injunctive relief is provided by California Health & Safety Code  
2 section 19953 and California Civil Code section 55, and other law. Plaintiff further  
3 requests that the Court award damages pursuant to Civil Code section 54.3 and  
4 other law and attorney fees, litigation expenses, and costs pursuant to Health &  
5 Safety Code section 19953, Civil Code sections 54.3 and 55, Code of Civil  
6 Procedure section 1021.5 and other law, all as hereinafter prayed for.

7       **54. DAMAGES:** As a result of the denial of full and equal access to the  
8 described facilities and due to the acts and omissions of Defendants and each of  
9 them in owning, operating, leasing, constructing, altering, and maintaining the  
10 subject facilities, Plaintiff has suffered a violation of his civil rights, including but  
11 not limited to rights under Civil Code sections 54 and 54.1, and has suffered  
12 difficulty, discomfort and embarrassment, and physical, mental and emotional  
13 personal injuries, all to his damages per Civil Code section 54.3, including general  
14 and statutory damages, as hereinafter stated. Defendants' actions and omissions to  
15 act constitute discrimination against Plaintiff on the basis that he was and is  
16 physically disabled and unable, because of the architectural and other barriers  
17 created and/or maintained by the Defendants in violation of the subject laws, to use  
18 the public facilities on a full and equal basis as other persons. These violations  
19 have deterred Plaintiff from returning to attempt to patronize the Spearmint Rhino  
20 Club and will continue to cause him damages each day these barriers to access  
21 continue to be present. Plaintiff intends to return the Spearmint Rhino Club once  
22 the premises has been made accessible for his full and equal enjoyment.

23       **55. FEES AND COSTS:** As a result of Defendants' acts, omissions, and  
24 conduct, Plaintiff has been required to incur attorney fees, litigation expenses, and  
25 costs as provided by statute, in order to enforce Plaintiff's rights and to enforce  
26 provisions of the law protecting access for disabled persons and prohibiting  
27 discrimination against disabled persons. Plaintiff therefore seeks recovery of all  
28 reasonable attorney fees, litigation expenses, and costs, pursuant to the provisions

1 of Civil Code sections 54.3 and 55, and California Health & Safety Code section  
 2 19953. Additionally, Plaintiff's lawsuit is intended to require that Defendants make  
 3 their facilities accessible to all disabled members of the public, justifying "public  
 4 interest" attorney fees, litigation expenses and costs pursuant to the provisions of  
 5 California Code of Civil Procedure section 1021.5 and other applicable law.

6 WHEREFORE, Plaintiff requests relief as outlined below.

7 **PRAYER**

8 Plaintiff has no adequate remedy at law to redress the wrongs suffered as set  
 9 forth in this Complaint. Plaintiff has suffered and will continue to suffer irreparable  
 10 injury as a result of the unlawful acts, omissions, policies, and practices of the  
 11 Defendants as alleged herein, unless Plaintiff is granted the relief he requests.  
 12 Plaintiff and Defendants have an actual controversy and opposing legal positions as  
 13 to Defendants' violations of the laws of the United States and the State of  
 14 California. The need for relief is critical because the rights at issue are paramount  
 15 under the laws of the United States and the State of California.

16 WHEREFORE, Plaintiff ARTHUR RENOWITZKY prays for judgment and  
 17 the following specific relief against Defendants:

18 1. Issue a preliminary and permanent injunction directing Defendants as  
 19 current owners, operators, lessors, and/or lessees of the subject property and  
 20 premises to modify the above described property, premises, policies and related  
 21 facilities to provide full and equal access to all persons, including persons with  
 22 physical disabilities for use of their facility, including restroom facilities, and  
 23 including alternate methods of providing restroom facilities if so required; and issue  
 24 a preliminary and permanent injunction pursuant to ADA section 12188(a) and state  
 25 law directing Defendants to provide facilities usable by Plaintiff and similarly  
 26 situated persons with disabilities, and which provide full and equal access, as  
 27 required by law, and to maintain such accessible facilities once they are provided;  
 28 to cease any discriminatory policies, and to train Defendants' employees and agents

1 in how to recognize disabled persons and accommodate their rights and needs;

2 2. Retain jurisdiction over the Defendants until such time as the Court is  
3 satisfied that Defendants' unlawful policies, practices, acts and omissions, and  
4 maintenance of physically inaccessible public facilities and policies as complained  
5 of herein no longer occur, and cannot recur;

6 3. Award to Plaintiff all appropriate damages, including but not limited to  
7 statutory damages and general damages in amounts within the jurisdiction of the  
8 Court, all according to proof;

9 4. Award to Plaintiff all reasonable statutory attorney fees, litigation  
10 expenses, and costs of this proceeding as provided by law;

11 5. Award prejudgment interest pursuant to Civil Code section 3291; and

12 6. Grant such other and further relief as this Court may deem just and  
13 proper.

14 Date: December 5, 2022

REIN & CLEFTON

15 /s/ Aaron Clefton

16 By AARON CLEFTON, Esq.  
17 Attorneys for Plaintiff  
ARTHUR RENOWITZKY

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury for all claims for which a jury is  
20 permitted.  
21

22 Date: December 5, 2022

REIN & CLEFTON

23 /s/ Aaron Clefton

24 By AARON CLEFTON, Esq.  
25 Attorneys for Plaintiff  
26 ARTHUR RENOWITZKY  
27  
28